IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Tracu Hua and Chi-Hung Mu, Plaintiffs, v. Bank of America, N.A. d/b/a Bank of American Home Loans, And Countrywide Home Loans, Inc., And Mortgage Electronic Registration Systems (MERS) Defendants	CASE NO.: *Civil Action* **COMPLAINT**

COMPLAINT

Plaintiffs, Tracu Hua and Chi-Hung Mu ("Plaintiffs"), by and through his undersigned attorneys, hereby file this Complaint against Defendants, and in support thereof, state as follows:

JURISDICTION AND VENUE

1. Jurisdiction is appropriately laid in the United States District Court, District of New Jersey pursuant to 28 USC 1331 as the claim in question is based upon a federal statute and Federal Question Jurisdiction.

2. Venue is appropriately laid in the District Court of New Jersey pursuant to 28 USC §1391(b)(2) as the events giving rise to the claim occurred substantially within the State of New Jersey.

3. Alternatively, this Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, as there is diversity in citizenship among Plaintiffs, residents of the State of New Jersey, and Defendant, which is a company that has a principal place of business located in the State of South Dakota, and there is an amount in controversy that exceeds $75,000.00

4. This Court has personal jurisdiction over Defendants, as Defendants have had the requisite minimum contacts with the State of New Jersey and Defendant has and continues to regularly conduct business in the State of New Jersey.

5. Venue lies in the United States District Court for the District of New Jersey, as the property that is the subject of this action is located in the State of New Jersey.

6. Further, venue lies in the United States District Court for the District of New Jersey, as a substantial part of the events or omissions upon which Plaintiffs' claims are based has occurred in the State of New Jersey.

PARTIES

1. Plaintiffs are citizens of the State of New Jersey and own the underlying property in question.

2. Upon information and belief, Defendant Bank of America, N.A. is a corporation organized and existing under the laws of North Carolina with a principal place of business located at 100 North Tryon Street, Charlotte, NC 28255.

3. Upon information and belief, Defendant Countrywide Home Loans, Inc., is a corporation organized and existing under the laws of California with a principal place of business located at 4500 Park Granada Calabasas, CA 91302.

4. Upon information and belief, Defendant Mortgage Electronic Registration Systems (MERS) is a corporation organized and existing under the laws of Virginia with a principal place of business located at 1818 Library St # 300, Reston, VA 20190.

FACTS COMMON TO ALL COUNTS

1. By way of background, the Note of the property 76 Anderson Street, Trenton, NJ 08611, was executed in favor of Countrywide Home Loans, Inc. (Countrywide) on April 2, 2004.

2. On October 17, 2013, Bank of America, N.A. (BOA), Countrywide's alleged successor in interest, filed a Foreclosure Complaint In the Mercer County Chancery division, docket number F-037643-13.
3. Mrs. Hua and Mr. Mu filed an answer on December 12, 2013.
4. In that answer, they did not originally argue that there was a violation of the Force Placed Insurance, as it had not occurred yet.
5. Mrs. Hua and Mr. Mu only learned of the Force Placed Insurance being place on the property from a letter dated April 5, 2017. (See Exhibit A).
6. In it, it states Force Placed Insurance was now being put on the home because of an allegedly lapse of insurance.
7. Prior to then, there were no letters, as would be required, stating the lender's intention to place this insurance on the property.
8. This eliminated the rights of Plaintiffs to show a copy of the insurance prior to this Force Placed Insurance being put on the property.
9. Had Plaintiffs been given that chance, they would have submitted the requisite proof to show that the Defendants were not entitled to get their own insurance.
10. At all times pursuant to the Mortgage Loan contract, Plaintiffs have maintained an insurance policy on the property and would have provided copies of same to the loan servicer upon request.
11. To date, BOA has not submitted for Final Judgment in the underlying Foreclosure matter, which means it is unknown how much they are going to claim their damages are.

COUNT I
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. 1692 *et seq*.

12. Plaintiff reincorporates by reference all allegations set forth elsewhere in the Complaint.

13. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3).

14. The mortgage loan that is the subject of this litigation is a debt as that term is defined by 15 U.S.C. 1692a(5).

15. Defendant BOA is a debt collector as that term is defined by 15 U.S.C. 1692a(6).

16. BOA was not retained as a debt collector and/or loan servicing company for the loan that is the subject of this litigation until after the debt was in default.

17. BOA engaged in conduct violating one or more sections of 15 U.S.C. 1692 *et seq*. by doing the following non-exhaustive list of acts.

    a. BOA made false, deceptive and/or misleading representations in connection with its efforts to collect a debt as prohibited by 15 U.S.C. 1692e.

    b. BOA made false representations as to the character and amount of the debt it sought to collect from Plaintiff, in violation of 15 U.S.C. 1692e(2).

    c. BOA's communications contradict its claim to be owed money to cover insurance on the property. Some communications claim no money to be owed for escrows while others demand that thousands of dollars are owed. BOA's communications are false, misleading and/or deceptive.

    d. BOA was notified that insurance was being carried and paid for by Plaintiff pursuant to the mortgage loan contract and BOA continued to wrongfully claim to be owed money to pay for a separate insurance contract obtained erroneously by BOA.

    e. BOA's demand for payment of $835.45 was a demand for payment of funds not owed and fees not incurred.

18. As a result of the actions of Defendants, Plaintiff is entitled to all relief under 15 U.S.C. 1692k including but not limited to statutory damages, actual damages, attorney fees and costs of suit.

COUNT II
VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT
12 U.S.C. 2601 *et seq.*

19. Plaintiff reincorporates by reference all allegations previously set forth in the Complaint as if set forth at length herein.

20. BOA is a loan servicing company subject to the requirements of the Real Estate Settlement Procedures Act (“RESPA”).

21. BOA obtained force-placed hazard insurance on the property in violation of 12 U.S.C. 2605(k).

22. Despite being notified by fax and mail by Plaintiff, that an insurance policy was maintained on the property, BOA continued to maintain a force-place insurance policy in violation of 12 U.S.C. 2605(k).

23. BOA was obligated to take action fixing its error in charging Plaintiff for an erroneous force-place insurance policy and failed to do so.

24. BOA was provided proof pursuant to 12 U.S.C. 2605(l) that Plaintiff maintained the requisite insurance policy on the property.

25. BOA was obligated to terminate the force-placed insurance policy within 15 days of receiving proof of Plaintiff’s existing insurance coverage pursuant to 12 U.S.C. 2605(l).

26. BOA continued to assess fees for force-placed insurance in violation of its obligation under RESPA.

27. As a result of BOA’s conduct, Plaintiff is entitled to all relief afforded under 12 U.S.C. 2605(f) including statutory damages, actual damages, attorney fees and costs.

WHEREFORE, PLAINTIFF demands:

a. Compensatory Damages

b. Punitive Damages

c. Statutory Damages

d. Restitution

e. Injunctive Relief

f. Attorney fees and costs

g. All other relief this Court determines to be just and fair.

COUNT THREE
(Theft, Conversion, Fraud, Duress, and Undue Influence)

1. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

2. Defendants, and all of them, individually and/or jointly, engaged in unconscionable commercial practices, deception, theft, unlawful taking and conversion, fraud, false pretense, false promise and/or misrepresentations with regard to the subject loan as stated above.

3. Alternatively, and or additionally, Defendants, and all of them, individually and/or jointly, engaged in acts of omission, including but not limited to knowing concealment, suppression in omissions of material facts in connection with the subject loan.

WHEREFORE, the Plaintiffs demand judgment against all Defendants, individually, jointly and severally for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT FOUR
(Violations of the Truth-in-Lending Act)

4. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

5. The transactions alleged in Background is a consumer transaction that involved the Defendants, and all of them, individually and/or jointly, as a creditor lending money to the Plaintiffs.

6. At all times relevant Defendants, and all of them, individually and/or jointly, were a creditor under the Federal Truth-in-Lending Act 15 U.S.C.A. § 1601 et. seq. (TILA) that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Plaintiffs

7. Defendants, and all of them, individually and/or jointly, failed to comply with TILA by failing to provide Plaintiffs with proper inaccurate written rescission notice and accurate material disclosures as required by TILA, including accounting upon demand, explanation of application of payments and monthly statements.

8. The TILA violations Complaint if herein were apparent on the face of the assigned documents, resulting in assignee liability pursuant to 15 U.S.C. §1641(e).

9. In light of these violations, Plaintiffs are entitled to have the Note and Mortgage declared null and void.

WHEREFORE, the Plaintiffs demand judgment against all Defendants, individually, jointly and severally for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT FOUR
(Violation of the New Jersey Consumer Fraud Act)

10. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

11. At all times relevant and material hereto the Plaintiffs were consumers of the Defendants goods and services and as such the conduct of the Defendants and the transaction was governed by the New Jersey Consumer Fraud Act N.J.S. A. 56:8-1 et seq.

12. At all times relevant and material hereto the Defendants did violate the New Jersey Consumer Fraud Act by engaging in deceptive and fraudulent practices as stated above.

13. The actions of the Defendants, individually and/or jointly, were performed in direct contradiction to their promises of superior services and conduct, but instead for their own financial self-interests, in detriment to the rights and position of the Plaintiffs.

WHEREFORE, the Plaintiffs demand judgment against all Defendants, individually, jointly and severally for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT FIVE
(Breach of Contract)

14. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

15. At all times relevant and material hereto the Defendants did breach the contractual terms of the loan/note by engaging in deceptive and fraudulent practices as hereinbefore set forth.

WHEREFORE, the Plaintiffs demand judgment against all Defendants, individually, jointly and severally for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT SIX
(UNJUST ENRICHMENT)

16. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

17. At all times relevant and material hereto the Defendants did become unjustly enriched at the expense of the Plaintiffs by engaging in deceptive and fraudulent practices as hereinbefore set forth.

WHEREFORE, the Plaintiffs demand judgment against all Defendants, individually, jointly and severally for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

_/S/ Joshua L. Thomas _
Joshua L. Thomas, Esq.
Attorneys for Plaintiffs,
Tracu Hua and Chi-Hung Mu

Dated: May 19, 2017